

## **COMPLYING WITH RULE 11**

### **Everything You Always Wanted Know About "IOLTA" and the Hawaii Justice Foundation**

- 1. WHAT IS IOLTA?** The Interest on Lawyers' Trust Accounts Program ("IOLTA") is a requirement of Hawaii Supreme Court Rule 11. Under this rule, attorneys who hold nominal or short-term client funds in trust must maintain an IOLTA account at any of Hawaii's participating financial institutions. At each bank, interest payments from these small, pooled accounts are aggregated and sent to the Hawaii Justice Foundation ("HJF") to be used for the charitable purposes authorized by Rule 11. Separate interest-bearing accounts set up for large amounts or funds or held for longer periods of time funds are not affected by IOLTA and may be created by the attorney if so desired. .
- 2. WHAT IS THE HAWAII JUSTICE FOUNDATION AND HOW IS IOLTA MONEY USED?** Hawaii Justice Foundation is a tax-exempt charitable organization established in 1969 by members of the Hawaii State Bar. In 1983 it was selected by the Supreme Court to administer IOLTA. The HJF is governed by a 21-member Board of Directors. Membership in the Foundation is open to any attorney or others who make proper application. The Foundation monitors Rule 11 and disburses IOLTA funds in the form of competitive grants to non-profit agencies that provide direct legal services to the poor, that help to educate the public and the legal profession, and that work to improve the administration of justice in Hawaii.
- 3. WHO BENEFITS FROM IOLTA?** You do. In fact, everyone does. Attorneys and cooperating banks benefit from the true goodwill that is generated by the program. Not-for-profit law-related organizations derive benefit by having additional money for needed projects, services, and activities. The community as a whole benefits by having more resources available for essential low-income legal services for those who often have no other place to receive legal assistance.
- 4. WHICH ATTORNEYS MUST COMPLY WITH IOLTA?** All members of the Hawaii State Bar practicing within the State of Hawaii who hold nominal or short-term funds in trust for clients or third persons, except as provided in Supreme Court Rule 11(e)(4), must comply by completing the HSBA Registration and Certification. Attorneys who certify that they (a) receive no client funds that would require a general trust account; (b) who do not practice law in Hawaii; (c) who are full-time judges, government attorneys, or military attorneys; or (d) who are inactive are exempted.
- 5. HOW DO YOU COMPLY?** Compliance is an annual event. If you and/or your firm already have an IOLTA account, you only need to provide the information being requested on the HSBA registration form. This information is confidential. Alternatively, if you or your firm are opening an IOLTA account for the first time, or if you are changing the location of your IOLTA, a copy of "Notice To Financial Institution" (Form 2) is available at [www.hawaiijustice.org](http://www.hawaiijustice.org). This form must be completed and given to your bank. Once the account is established, each November or December you will provide updated information as part of your annual HSBA attorney registration process.

**6. WHAT IF YOU DON'T COMPLY?** The HJF and HSBA have combined their annual registrations to make this process as user-friendly as possible. However, failure to complete the HJF portion of the registration and certification (and the other portions of the HSBA registration process) within the specified HSBA registration time will result in administrative suspension from the practice of law in the State of Hawaii.

**7. WHAT ARE THE TAX IMPLICATIONS OF IOLTA?** There are none for participating attorneys and firms. W-9 forms are required by the IRS to be filed by financial institutions with each interest-bearing account. The W-9 form lists the Hawaii Justice Foundation as "Payee", bears the Foundation's taxpayer identification number, and certifies that the IOLTA account is not subject to backup withholding. The HJF's federal identification number is 23-7047345 and should be given by the bank to the IRS for each IOLTA account.

**8. WHAT IF YOU MISTAKENLY DEPOSIT FUNDS INTO YOUR IOLTA ACCOUNT?** If a trust deposit intended to be invested for a client is deposited by mistake into your IOLTA account, contact the Hawaii Justice Foundation if interest earned on the trust deposit has already been transferred to the Hawaii Justice Foundation. A prompt refund will be issued by the Foundation.

**9. WHAT IF YOUR FINANCIAL INSTITUTION MAKES AN ERROR IN YOUR IOLTA ACCOUNT?** Over the years, Hawaii's financial institutions have done an excellent job with their IOLTA accounts. However, if there are remittance errors, financial institutions -- not attorneys or law firms -- are responsible for their correction.

**10. WHO DOES THE ACCOUNTING, BOOKKEEPING, AND DISBURSING FOR AN IOLTA ACCOUNT?** The financial institution transfers interest earned on each attorney's or firm's IOLTA account to the Justice Foundation and reports interest payments from the account to the Foundation. All other accounting aspects of handling the IOLTA account are the responsibility of the attorney.

**11. WHO HAS ACCESS TO YOUR IOLTA RECORDS?** The Foundation has access only to the information provided by the lawyer or law firm on the Registration and Certification and on the monthly reports submitted to HJF from each bank. These monthly reports to the Foundation do not show any client deposits or withdrawals from the lawyer's account. These monthly reports list for all attorney accounts with that bank, the average daily balance upon which interest is calculated, the percentage of interest applied to the average daily balance, the gross amount of interest earned, any service charges to HJF, and the net interest earned. The Foundation's policy has always been to protect the confidentiality of the IOLTA account information.

**12. WHICH FINANCIAL INSTITUTIONS MAINTAIN IOLTA ACCOUNTS?** Currently, nine banks participate in the IOLTA program. They are: American Savings Bank, Bank of Hawaii, Bank of the Orient, Central Pacific Bank, First Foundation Bank (formerly known as Pacific Rim Bank), First Hawaiian Bank, Hawaii National Bank, Home Street Bank, and Ohana Pacific Bank. You are free to choose any of these nine banks that you wish. **Of these nine banks, five are "Prime Partner Banks," which means these five banks have made**

**arrangements to pay higher rates of interest to HJF. These five banks are: American Savings Bank, Bank of Hawaii, Central Pacific Bank, First Foundation Bank (formerly known as Pacific Rim Bank), and First Hawaiian Bank.**

**13. WHICH FINANCIAL INSTITUTIONS OFFER THE MOST FAVORABLE TERMS?** As described above, there are currently five “Prime Partner Banks” that pay HJF higher rates of interest. Monthly service fees on IOLTA accounts are paid by the bank or by HJF, not by the attorney. However, HJF does not pay for service charges such as insufficient funds costs, stop payment charges, wire fees, or check printing charges. These special charges are the responsibility of the attorney.

**14. HOW DO YOU REACH THE HAWAII JUSTICE FOUNDATION?**

Correspondence to the Foundation should be addressed to Hawaii Justice Foundation, P. O. Box 1230, Honolulu, Hawaii 96807-1230. The HJF can also be reached by e-mail at [hjff@hawaii.rr.com](mailto:hjf@hawaii.rr.com), via telephone at 808•537-3886, or facsimile at 808•528-1974. E-mail is our preferred method of communication.